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**IN THE  
Supreme Court of the United States**

**October Term, 1976**

**Case No. 76-857**

**DORA M. FRAZIER,**

**Appellant,**

**vs.**

**ALUM CREST, ET AL.,**

**Appellees.**

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**BRIEF IN OPPOSITION TO JURISDICTION**

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### BRIEF IN OPPOSITION TO JURISDICTION

#### Opinions Below

The Appellant has accurately set forth the opinions below.

#### Jurisdiction

The jurisdictional requests are adequately set forth in the petition.

#### Statutes Involved

The Appellant has adequately set forth sections 2743.01 and 2743.02(A) of the Ohio Revised Code. The Appellees would add, however, Article 1, Section 16 of the Ohio Constitution which provides:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without

denial or delay. Suits may be brought against the state, in such courts and in such manner as may be provided by law. (Adopted September 3, 1912).

### Questions of Law Presented

The questions of law as presented by the Appellant are correctly stated.

### Statement of the Case

The statement of the case as presented by the Appellant is adequately stated except that negligence has not been proven and there was a denial of the said negligence.

### Argument

This case deals basically with the issue of sovereign immunity and whether or not Ohio's solution to the problem is in contravention of the United States Constitution. That solution is the Court of Claims Act, Sections 2743.01 and 2743.02(A) of the Ohio Revised Code.

The State of Ohio may only be sued in such courts and in such manner as may be provided by law. Article 1, Section 16, Ohio Constitution. The legislature has enacted the Court of Claims Act to provide the means by which the State may be sued. That consent does not apply to the subdivisions, i.e. the counties in this case.

Thus, since the State of Ohio has not given consent for the subdivision to be sued, then it is bared by the doctrine of sovereign immunity. Several U. S. Supreme Court cases support this contention. *Ford Motor Co. v. Treasury Dept.*, 323 U.S. 459 (1934); *Ex Parte: New York*, 256 U.S. 490 (1921).

Furthermore, Sections 2743.01 and 2743.02(A) of the Ohio Revised Code, do not contravene the equal pro-

tection clause of the Fourteenth Amendment of the Constitution of the United States. *Lindsley v. National Carbonic Gas Co.*, (1911), 220 U.S. 61; *Dandridge v. Williams*, (1970), 397 U.S. 471. The court in *Dandridge v. Williams*, *supra*, stated on page 485:

"The problems of government are practical ones and may justify, if they do not require, rough accommodation-illogical, it may be, and unscientific." *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L.Ed. 730. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 336 U.S. 420, 426, 81 S. Ct. 1101, 1105, 6 L.Ed. 2d 393.

Sections 2743.01 and 2743.02(A) of the Ohio Revised Code do not deny due process or the right to access to courts. *Boddie v. Connecticut*, (1971), 401 U.S. 371. The court in that case spoke of the Due Process clause on page 381 and stated:

We do not decide that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual, for, as we have already noted, in the case before us this right is the exclusive precondition to the adjustment of a fundamental human relationship. The requirement that these appellants resort to the judicial process is entirely a state-created matter.

### Conclusion

For the reasons cited heretofor, the Appellees respectfully request this Court to deny jurisdiction to this case. The issues presented regarding sovereign im-



munity have been well litigated. Furthermore, the new Court of Claims Act does not alter the situation in such a manner as to deprive the Appellant of her constitutional rights as guaranteed by the United States Constitution.

Respectively submitted,

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### CERTIFICATE OF SERVICE

I, Alan C. Travis, Counsel for Appellees herein, and a member of the Bar of the Supreme Court of the United States hereby certify that on the ..... day of January, 1977, I served three copies of the foregoing Brief in Opposition to Jurisdiction, by mailing the copies in a duly addressed envelope to Mr. Philip Q. Zauderer, and David K. Frank, 16 East Broad Street, Suite 301, Columbus, Ohio 43215. I further certify that all parties required to be served have been served.

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